IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 637 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SAILESH KARSANBHAI MAKWANA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 637 of 2001

MR DJ CHAUHAN for Petitioner No. 1

Mr. H.L. Jani, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/07/2001

ORAL JUDGEMENT

Heard learned advocate Mr. Chauhan for the petitioner and the learned AGP Mr. Jani for the respondents. In this petition under Article 226 of the the Constitution of India, the petitioner has challenged

the impugned order of detention dated 25th December, 2000 passed by the Commissioner of Police, Rajkot City whereunder the petitioner has been ordered to be detained at the District Jail at Surat as Class II detenu. According to the grounds of detention communicated to the petitioner under section 9(1) of the Gujarat Prevention of Anti Social Activities Act, the petitioner has been considered as bootlegger as defined u/s.2(b) of the PASA Act and in all, two offences have been registered against the petitioner wherein last offence registered is dated 16th December, 2000 and and the impugned order of detention has been passed by the detaining authority on 25th December, 2000. The statements of the secret witnesses recorded on 22nd December, 2000 were verified by the detaining authority on 23rd December, 2000. As per the grounds of detention, the petitioner was involved in two unregistered offences dated 26.11.2000 and 7.10.2000. The petitioner was enlarged on regular bail in connection with the offences registered against him. Representation dated 3.1.2001 was made by the petitioner which was received by the respondents on 4.1.2001 and the representation was decided by the State Government on 9.1.2001. Under the said representation, certain documents were demanded by the petitioner which were not supplied. Specific contention to that effect has been raised by the petitioner in para 6 of the petition. The respondents have not filed any reply to the present petition.

2. Learned advocate Mr. Chauhan has raised various contentions while challenging the impugned order of detention. However, according to him, one contention raised in para 6 of the petition is enough to vitiate the impugned order of detention. Para 6 of the petition reads as under:

"6. The petitioner submits that his friend and relative Mr. Kalubhai Valabhai Makwana has made representation to the respondent no.2 on dt. 3.1.2001 by Regd. Post with A.D. and demanded copies of the statements of Dolatsinh, Abhalbhai and CHaman how (who) are the members of the police raid party and the RPAD has been received by them on dt. 3.1.2001 but till this date, the petitioner has not been replied. As such, the petitioner could not make effective representation and his fundamental rights guaranteed under Art. 22(5) of the Constitution of India are violated and his continuous detention is illegal which requires to be quashed and set aside."

According to Mr. Chauhan, the contentions raised in para 6 of the petition have remained uncontroverted and unchallenged as no reply has been filed by the respondents. In support of this contention, he has relied upon the decision of the apex court reported in 1990(2) SCC page 1.

Learned AGP Mr. Jani has supported the impugned order of detention and has submitted that whatever documents relied on and referred to by the detaining authority were supplied to the detenu alongwith the grounds of detention. He has submitted that looking to the offences committed by the detenu and also considering the seriousness of the offences, there were compelling circumstances to detain the detenu under the PASA Act as the activities of the detenu were prejudicially affecting the maintenance of public order. According to him, the impugned order of detention was passed on the basis of the material on record and this court should therefore not interfere with the same.

As regards the contention about non consideration of the representation and also about the non supply of the documents demanded by the petitioner under the said representation, specific contention to that effect has been raised in para 6 of the petition that the documents demanded by the petitioner were not supplied by the respondents. According to my view, it would amount to non communication of the grounds and would violate the mandate given under Article 22 (5) of the Constitution of India. The view taken by the apex court in this regard in M. Ahmedkutty v. Union of India and another reported in 1990(2) SCC 1 is material. Para 19 and 20 of the report are reproduced as under:

19. The next submission is that of non-supply of the bail application and the bail order. This Court, as was observed in Mangalbhai Motiram Patel v. State of Maharashtra, [1981] 1 SCR 852, has 'forged' certain procedural safeguards for citizens under preventive detention. The Constitutional imperatives in Article 22(5) are two-fold: (a) The detaining authority must, as soon as may be i.e. as soon as practicable, after the detention communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making the representation against the order of detention.

The right is to make an effective representation and when some documents are referred to or relied on in the grounds of detention, without copies of such documents, the grounds of detention would not be complete. The detenu has, therefore, the right to be furnished with the grounds of detention along with the documents so referred to or relied on. If there is failure or even delay in furnishing those documents it would amount to denial of the right to make an effective representation. This has been settled by a long line of decisions: Ramachandra A. Kamat v. Union of India, [1980] (2) SCR 1072; Frances Coralie Mullin v. W.C. Kharnbra & Ors., [1980] 2 SCR 1095; Smt. Ichhu Devi Chararia v. Union of India, [1981] SCR 640; Pritam Nath Hoon v. Union of India, [1981] 1 SCR 682; Shri Tushar Thakkar v. Union of India, [1980] 4 SCC 499; Lallubhai Jogibhai Patel v. Union of India, [1981] 2 SCC 427; Kirit Kumar Chaman Lal Kundaliya v. Union of India, [1981] 2 SCC 436 and Smt. Ana Carelina D'Souza v. Union of India, [1981] Suppl. SCC 53.

20. It is immaterial whether the detenu already knew about their contents or not. In Mehrunissa v. State of Maharashtra, [1981] 2 SCC 709, it was held that the fact that the detenu was aware of the contents of the documents not furnished was immaterial and non-furnishing of the copy of the seizure list was held to be fatal. To appreciate this point one has to bear in mind that the detenu is in jail and has no access to his own documents. In Mohd. Zakir v. Delhi Administration, [1982] 3 SCC 2 16 it was reiterated that it being a Constitutional imperative for the detaining authority to give the documents relied on and referred to in the order of detention pari passue the grounds of detention, those should be furnished at the earliest so that the detenu could make an effective representation immediately instead of waiting for the documents to be supplied with. The question of demanding the documents was wholly irrelevant and the infirmity in that regard was violative of Constitutional safeguards enshrined in Article 22(5).

Therefore, in the facts of the present case and also in view of the aforesaid decision in 1990(2) SCC page 2, considering the non supply of the documents to the petitioner which were demanded as per representation dated 3.1.2001 and also in light of the observations made by the apex court in the aforesaid decision, the impugned order of detention is required to be quashed and set aside.

In the result, this petition is allowed. Impugned order of detention dated 25th December, 2000 actually executed on 28th December, 2000 passed by the detaining authority is quashed and set aside. The petitioner detenu Shailesh Karshanbhai Makwana who has been detained in Surat Jail Surat is ordered to be released forthwith if he is not required in any other case. Rule is made absolute accordingly with no order as to costs. DSP.

18.7.2001. (H.K.Rathod,J.)

Vyas